FMC San Fose

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BRENDA DAVIS SANTA CLARA COUNTY RECORDER Recorded at the request of Financial Title Company RDE # 003 6/01/1998 8:00 AM

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

Convenant of deed Restriction

OF TOXIC SUBSEQUES ON PERMITTING BRANCE PROTECTION A 1998 CONTROL Protection Agency AECEIVED

Paula por Jim

COVENANT OF DEED RESTRICTION

3 FMC Corporation	
-	
When Recorded, Mail To:	•
Department of Toxic Substances Northern California Permitting Too Heinz Avenue, Suite 200 Berkeley, CA 94710 Attention: James M. Pappas, P.	Branch

COVENANT TO RESTRICT USE OF PROPERTY

FMC Corporation - San Jose Facility - Plant 7 Area

1105/1107 and 1115 Coleman Avenue and 1095 Stockton Avenue
San Jose, California

This Covenant and Agreement ("Covenant") is made on the 18th day of February, 1998 by FMC Corporation ("Covenantor"), who is the owner of record of certain property situated in San Jose, County of Santa Clara, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference ("Property"), and by the Department of Toxic Substances Control ("Department"). Covenantor and the Department desire and intend that in order to protect the present and future public health and safety, the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from the presence of hazardous substances and wastes on the Property.

ARTICLE I

STATEMENT OF FACTS

1.01 Description of contamination. The Property has
been the site of a manufacturing facility primarily for the
production and testing of military tracked vehicles and
production of other machinery, including airline material
handling and servicing equipment and parts, and pump and
sprayer equipment. Principal operations at the Property
have included machining, degreasing, electroplating, metal
finishing, welding, painting, and parts assembly for the
research and development, manufacture and rehabilitation of
such machinery and equipment. The hazardous materials
managed and/or used at the Property included various
petroleum hydrocarbon oils, coolants, lubricants, solvents,
paints, acids, alkalis and metals. Chemicals of concern
associated with the above-mentioned hazardous materials have
been detected in subsurface soil and groundwater on the
Property as a result of routine handling and use of these
chemicals and the management of hazardous wastes.
Attachment No. 1 lists the maximum detected chemical
concentrations found in soil and groundwater on the
Property. Based on the report titled "RCRA Facility
Investigation Plant No. 7 Area, United Defense, L.P./FMC",
dated December 1996 (RFI Report), these maximum
concentrations are below (1) the Department's Total
Threshold Limit Concentration levels for definition of

hazardous waste, and (2) the Department's approved sitespecific health risk-based concentration levels acceptable for industrial or commercial uses of the Property.

1.02 Potential Exposure Pathways. An evaluation of the potential human health risk associated with chemicals of concern in soil and groundwater at the Property was performed. The detailed findings of this evaluation were presented in the RFI Report. Based on the RFI Report, the only current or future receptor at the Property expected to have more than an insignificant exposure is a construction or excavation worker who may experience exposure of brief duration during active demolition of existing structures or construction of utilities, buildings or other related activities. All other potential receptors and pathways were evaluated to be incomplete or insignificant.

1.03 Surrounding Land Use. The 29-acre Property includes
1105/1107 and 1115 Coleman Avenue and 1095 Stockton Avenue.

Land adjacent to the Property is used mainly for industrial
purposes; the only residential area is located along Newhall
Street, approximately 100 feet to the east-southeast.

According to the General Plan prepared by the City of San
Jose Planning Department (Shaffer 1995), the Property is
currently zoned for heavy industrial use. Other land use
restrictions may apply to a portion of the Property pursuant
to Santa Clara County Airport Land Use Commission policies.

ARTICLE II

GENERAL PROVISIONS

2.01 Provisions to Run with the Land. This Covenant
sets forth protective provisions, covenants, restrictions,
and conditions (collectively referred to as "Restrictions")
upon and subject to which the Property and every portion
thereof shall be improved, held, used, occupied, leased,
sold, hypothecated, encumbered, and/or conveyed. Each and
all of the Restrictions shall run with the land, and pass
with each and every portion of the Property, and shall apply
to, inure to the benefit of, and bind the respective
successors in interest of Covenantor. Each and all of the
Restrictions are imposed upon the entire Property unless
expressly stated as applicable to a specific portion of the
Property. Each and all of the Restrictions are imposed and
run with the land pursuant to Health and Safety Code
sections 25202.5 and 25202.6 and Civil Code section 1471.
Each and all of the Restrictions are for the benefit of and
enforceable by the Department.

2.02 <u>Concurrence of Owners Presumed</u>. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, assignees, agents, sublessees, and the agents and lessees of such owners, heirs, successors, and assignees, that the

Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

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2.03 <u>Incorporation into Deeds and Leases</u>. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

ARTICLE III

DEFINITIONS

- 3.01 <u>Department</u>. "Department" shall mean the California Department of Toxic Substances Control and shall include its successor agencies, if any.
- 3.02 <u>Improvements</u>. "Improvements" shall mean all buildings, roads, driveways, regrading, and paved parking areas, constructed or placed upon any portion of the Property.
- 3.03 Occupant(s). "Occupant(s)" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.
- 3.04 Owner(s). "Owner(s)" shall mean the Covenantor or its successors in interest, including heirs and assigns, who hold title to all or any portion of the Property.

ARTICLE IV

DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

- 4.01 <u>Restrictions on Development and Use</u>. Covenantor promises to restrict the use of the Property as described in Exhibit A as follows:
 - a. The use of the Property shall be restricted for commercial or industrial purposes only.
 - b. No residence for human habitation shall be permitted on the Property.
 - c. No hospitals or similar medical facilities shall be permitted on the Property.
 - d. No schools for persons under 18 years of age shall be permitted on the Property.
 - e. No day care centers for children or senior citizens shall be permitted on the Property.
 - f. No drilling beneath 55 feet below ground surface for drinking water, oil, or gas shall be permitted on the Property. No Owner(s) or Occupant(s) of the Property or any portion thereof shall extract, utilize, consume or permit to be extracted, utilized or consumed any water from beneath 55 feet below the surface of the ground without prior written approval of the Department.
 - g. Engineering controls, such as wind erosion control and dust suppression by watering, will be implemented during construction activities to

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minimize or eliminate potential exposure of offsite residents and on-site workers to chemicallyimpacted soil via pathways such as inhalation of impacted dust and direct contact after deposition of dust. Future workers not involved in construction and customers at the Property are not anticipated to be exposed to impacted soil or .. groundwater since the Property will be occupied by buildings, paved with either concrete or asphalt, covered with landscaping or other vegetative cover, or covered with other suitable cover to prevent direct exposure. In the event that there is future industrial or commercial land use that does not involve one or more forms of the foregoing cover over the entire Property, approval for such use will be obtained from the Department.

- h. No raising of food (e.g., livestock, food crops, etc.) shall be permitted on the Property.
- i. Subject to applicable security and safety procedures, the Owner(s) grants the Department access to the Property at all reasonable times for inspection, surveillance, monitoring, maintenance, and other activities pertaining to the restrictions and other provisions of this covenant as deemed necessary by the Department for the protection of public health and the environment.

j. Prior to sale, lease, or rental, the Owner(s) and Occupant(s) shall give written notice to purchasers, lessees, and tenants stating that there is residual contamination as specified in California Health & Safety Code Section 25359.7.

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- 4.02 Conveyance of Property. The Owner(s) shall provide a thirty (30) days advance notice to the Department of any sale, lease or other conveyance of the Property or an interest in the Property to a third person. The Department shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law, by administrative order, or this Covenant.
- 4.03 Enforcement. Failure of the Owner(s) or Occupant(s) to comply with any of the requirements, as set forth in Section 4.01, shall be grounds for the Department, by reason of the Covenant, to require that the Owner(s) or Occupant(s) comply with this covenant and modify or remove any improvements constructed in violation of Section 4.01. Violation of the Covenant shall be grounds for the Department to file civil and criminal actions against the Owner(s) or Occupant(s) as provided by law.
- 4.04 Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the Property. The instrument shall contain the following

statement:

"The land described herein contains hazardous substances and wastes. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the California Health and Safety Code as made applicable to this Property by a specific Covenant to Restrict Use of Property, a copy of which is attached hereto and incorporated herein by reference. This statement is not a declaration that a hazard exists."

ARTICLE V

VARIANCE AND TERMINATION

- 5.01 <u>Variance</u>. Any Owner(s) or, with the Owner(s)' written consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with California Health & Safety Code section 25202.6.
- 5.02 Termination. Any Owner(s) or, with the Owner(s)' written consent, any Occupant of the Property or a portion thereof may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with California Health & Safety Code section 25202.6.

 5.03 Term. Unless modified or terminated in accordance with Sections 5.01 or 5.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE VI

MISCELLANEOUS

- 6.01 <u>No Dedication Intended</u>. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.
- 6.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or 2) seven (7) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To: "Covenantor"

FMC Corporation 200 E. Randolph Drive Chicago, IL 60601 Attention: Philip J. Sexauer

Treasury Services - Real Estate Manager

1	Copy to:
2 3 4 5 6 7 8 9	FMC Corporation Remediation Department P.O. Box 367 1125 Coleman Avenue San Jose, CA 95103 Attention: Sally A. Jenks West Coast Remediation Manager EH&S: Toxicology Group
10	To:
11 12 13 14 15 16	Department of Toxic Substances Control Northern California Permitting Branch 700 Heinz Avenue, Suite 200 Berkeley, California 94710 Attention: James M. Pappas, P.E., Chief Copy to:
18 19 20 21 22 23	California Regional Water Quality Control Board San Francisco Bay Region 2101 Webster Street, Suite 500 Oakland, CA 94612 Attention: Loretta Barsamian Executive Officer
24	6.03 Partial Invalidity. If any portion of the
25	Restrictions or terms set forth herein is determined to be
26	invalid for any reason, the remaining portion shall remain
27	in full force and effect as if such portion has not been
28	included herein.
29	6.04 Article headings. Headings at the beginning of
30	each numbered article of this Covenant are solely for the
31	convenience of the parties and are not a part of the
32	Covenant.
33	6.05 Recordation. This instrument shall be executed

by the Covenantor and by the Northern California Permitting

Branch Chief, California Department of Toxic Substances

34

. 1	Control. This instrument shall be recorded by the
2	Covenantor in the County of Santa Clara within ten (10) days
3	of the date of execution.
4	6.06 References. All references to Health and Safety
5	Code sections include successor provisions.
6	IN WITNESS WHEREOF, the parties execute this Covenant as of
7	the date set forth above.
8	OWNER: FMC Corporation
9	By: Wolt fitues
10	Title: Vica littiam
11	Date: _09000 31, 1997
12	DEDARGNESS OF MOVES GVD COLVES
13	DEPARTMENT OF TOXIC SUBSTANCES CONTROL
14 15	By: man mi Pappar
16	James M. Pappas, P.E., Chief Northern California Permitting
17	Branch
18	Date:

STATE OF PENNSYLVANIA
COUNTY OF PHILADELPHIA

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14 15 on <u>Cracker 31</u>, 1997 before me, a Notary Public in and for State of Pennsylvania, personally appeared <u>Robert J. F. Eldo</u>, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

NotaryDs Signature

NOTARIAL SEAL SUZAN BUTT Notary Public City of Philadelphia, Phila. County My Commission Expires Nov 30, 1998

STAȚE	OF CALIFORNIA	
COUNTY	OF ALAMEDA	

on 2-18-98-, 1998 before me, a Notary Public in and for State of California, personally appeared James M. Pappas, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the Department of Toxic Substances Control executed the instrument.

MOLLY MEISENHEIMER
Comm. # 1151071
NOTARY PURILIC CALIFORNIA

WITNESS my hand and official seal.

Notary's Signature

CONSENT TO RECORDATION

Pacific Gas and Electric Company, a California corporation, has acquired from FMC Corporation the fee interest in that certain real property more particularly described on Exhibit "A-1" attached hereto ("PG&E Property"). The PG&E Property is a portion of the Property more particularly described on Exhibit "A" attached hereto. Pacific Gas and Electric Company hereby joins in the Covenant solely for the purpose of subjecting the PG&E Property to the Covenant, hereby consents to recordation of the Covenant against the PG&E Property and hereby acknowledges that the Covenant shall run with the PG&E Property in accordance with Section 2.01 of the Covenant.

2.01 of the Covenant.		
	California corporation By:	ELECTRIC COMPANY, a
JOHN C. BURA COMM. * 1177671 COMM. * 1177671	proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. WITNESS my hand and official seal.	CAPACITY CLAIMED BY SIGNER Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document. INDIVIDUAL CORPORATE OFFICERS(S) Title(s) GENERAL ATTORNEY-IN-FACT TRUSTEE(S) GUARDIAN/CONSERVATOR OTHER: SIGNER IS REPRESENTING: Name of Person(s) or Entity(ies)
COMM. EXP. MARCH 28, 2002	SIGNATURE OF NOTARY	



EXHIBIT "A" LAND USE DEED RESTRICTION EASEMENT LANDS OF FMC CORPORATION SAN JOSE, CALIFORNIA

ALL that certain real property situate in the City of San Jose, County of Santa Clara. State of California, more particularly described as follows:

Being a portion of the lands shown upon the Record of Survey Map entitled "Map showing the Lands of the Estate of Mary Ives Crocker, deceased", which map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on February 11, 1936 in Book Z of Maps at page 42, more particularly described as follows:

Commencing at the most Easterly corner of that parcel of land conveyed to Food Machinery Corporation and described in the Deed recorded October 29, 1946 in Book 1388, at page 294, Official Records of the County of Santa Clara; said corner being at the intersection of the Southwesterly line of Coleman Avenue, as said Coleman Avenue (100 feet wide) was dedicated to public use for street purpose by San Jose City Ordinance No. 3376 dated July 28, 1947 and filed October 31, 1949 in Book 1869 of Official Records of Santa Clara County, at page 116 with the Northwesterly line of Newhall Street as said Newhall Street (60 feet wide) appears on said Record of Survey Map;

Thence South 48° 54' 00" West along said northwesterly line of Newhall Street 77.85 feet to the True Point of Beginning;

Thence continuing along said northwesterly line, South 48° 54' 00" West 1051.52 feet to a point on the northeasterly time of the lands of Southern Pacific Railroad Company;

Thence along said northeasterly line North 57° 34' 50" West 880.00 feet;

Thence leaving said northeasterly line North 32° 25' 10" East 1082.97 feet to a point on the southwesterly line of Coleman Road (100 feet wide);

Thence along said southwesterly line South 57° 34′ 50" East 979.35 feet;

Thence continuing along said southwesterly line in a southeasterly direction along a non-tangent curve to the right having a radius of 994.00 feet, concave to the south, whose radius point bears South 41° 19' 20" West; through a central angle of 11° 02' 54": an arc length of 191.67 feet to a point of compound curvature;

Thence along a curve to the right having a radius of 22.00 feet through a central angle of 86° 31' 46", an arc length of 33.23 feet to the True Point of Beginning.



· Ruth and Goin

Together with:

A portion of Lot 1 and all of Lots 2, 3 and 4, Block 23 and portion of Laurel Street, now abandoned, and portion of Hamline Street, now abandoned, as shown on that certain Map entitled. "Map of University Grounds:, which Map as filed for record in the office of Recorder of the County of Santa Clara, State of California on August 25, 1866 in Book A of Maps, pages 80 and 81, and more particularly described as follows:

Beginning at the point of intersection of the Southeasterly line of Newhall Street with the Southwesterly line of Stockton Street, as said Streets are shown upon the Map above referred to:

Thence from said point of beginning Southwesterly and along the said Southeasterly line of Newhall Street South 48° 54' West 450.00 feet to the point of intersection thereof with the center line of Laurel Street (now abandoned), as said Street is shown upon the Map above referred to;

Thence Southeasterly along the said center line of Laurel Street South 41° 06' East 285.00 feet;

Thence, leaving said center line North 48° 54' East 105.00 feet;

Thence South 41° 06' East 115.00 feet more or less to a point on the Southeasterly line of Hamline Street, (now abandoned), as said Street is shown upon the Map above referred to;

Thence Northeasterly along the said Southeasterly line of Hamline Street North 48° 54' East 345.00 feet to the point of intersection thereof with the said southwesterly line of Stockton Street:

Thence northwesterly along said southwesterly line of Stockton Street North 41° 06' West 400 feet more or less to the point of beginning.

EXHIBIT "A-1"

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, described as follows:

All of Lots 1, 2, 3 and 4, Block 23 and portion of Laurel Street, now abandoned, and portion of Hamline Street, now abandoned, as shown on that certain Map entitled, "Map of University Grounds", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on August 25, 1866 in Book A of Maps, pages 80 and 81, and more particularly described as follows:

Beginning at the point of intersection of the Southeasterly line of Newhall Street with the Southwesterly line of Stockton Street, as said Streets are shown upon the Map above referred to; thence from said point of beginning Southwesterly and along the said Southeasterly line of Newhall Street for a distance of 450.00 feet to the point of intersection thereof with the center line of Laurel Street (now abandoned), as said Street is shown upon the Map above referred to; thence Southeasterly along the said center line of Laurel Street for a distance of 412.00 feet to the point of intersection thereof with the Southeasterly line of Hamline Street (now abandoned), as said Street is shown upon the Map above referred to; thence Northeasterly along the said Southeasterly line of Hamline Street for a distance of 450.00 feet to the point of intersection thereof with the said Southwesterly line of Stockton Street; thence Northwesterly along said Southwesterly line of Stockton Street for a distance of 412.00 feet to the point of beginning of this description.

ARB No: 230-22-6 APN No: 230-22-006

ATTACHMENT NO. 1

CHEMICAL CONCENTRATIONS IN SOIL PLANT NO. 7 AREA

		Soil Construction	
Chemical	Maximum Detected	Risk-Based	TTLC
	Concentrations	- Target Level	Values
	[mg/kg]*	[mg/kg]*	[mg/kg]**
Benzene	0.13	52	NA
Ethylbenzene	13	693	. NA
Toluene	0.084	2.752	NA
Xylene (mixed)	36	988	NA
Bromomethane	0.083	118	NA
Methyl tertbutyl ether (MTBE)	0.07	1.034	NA
Phenol	3.9	35.712	NA
Tetrachloroethylene (PCE, PERC)	0.023	201	NA
Trichloroethylene (TCE)	0.72	436	2.040
Antimony and compounds	18	438	500
Arsenic (cancer endpoint)	20	. 25	500
Barium and compounds	405	12.263	10.000
Beryllium and compounds	0.8	17	75
Cadmium and compounds	. 5	316	100
Chromium Total (1/6 ratio Cr VI/Cr III)	75	170	2.500
Chromium VI .	3.4	13	500
Cobalt	82 .	20.211	8,000
Copper and compounds	54	40.642	2.500
Lead	55.9	2.800	1,000
Mercury (assumed as 100% methyl mercury)	1.1	109	20
Molybdenum	4.1	5.471	3.500
Nickel and compounds	120	5.784	2.000
Selenium	6.3	5,471	100
Silver and compounds	12	5.471	500
Thallium (assumed as 100% Thallic oxide)	34 .	77	700
Vanadium .	70	7.660	2.400
Zinc	150	100.000	5.000
Cyanide (assumed as 100% copper cyanide)	0.2	5.471	NA

Notes:

NA - Not Available or Not Applicable

- * RCRA Facility Investigation Report, Plant No. 7 Area, December 1996.
- ** Total Threshold Limit Concentrations (TTLC) Ref. California Code of Regulations. Title 22. Division 4.5, Article 3, Section 66261.24.

ATTACHMENT NO. 1

CHEMICAL CONCENTRATIONS IN GROUNDWATER PLANT NO. 7 AREA

		T	· · · · · · · · · · · · · · · · · · ·
		 Groundwater 	
Chemical	Maximum Detected	Construction Risk-Based	1
	Concentrations	Target Level	STLC Values
·	[mg/l]*	[mg/L]*	[mg/l]**
Benzene	0.18	0.91	NA NA
Ethylbenzene	5.8	39	NA
Toluene	0.00061	122	NA
Xylene (mixed)	16	200	NA
I,1,1-Trichloroethane	0.006	60	NA
1,1-Dichloroethane	0.00095	. 34	NA
1,2-Dichlorobenzene	0.00074	42	NA
1,2-Dichloroethane (EDC)	0.0007	5.2	NA
1,2-Dichloroethylene (cis)	0.003	40	NA
Phenol	0.02	3.211	NA
Tetrachloroethylene (PCE, PERC)	0.0034	0.8	NA
Trichloroethylene (TCE)	0.19	7.7	204
Antimony and compounds	0.0616	5.9	15
Arsenic (cancer endpoint)	0.245	0.69	5
Barium and compounds	17.7	1.030	100
Boron	0.585	1.325	NA
Chromium Total (1/6 ratio Cr VVCr III)	2.54	14.718	5
Cobalt	0.738	4.415	80
Copper and compounds	2.23	547	25
Lead	0.493	. NA	5
Mercury (assumed as 100% methyl mercury)	0.0329	2.9	0.2
Molybdenum	0.0061	74	350
Nickel and compounds	4.93	5.887	. 20
Selenium ,	0.0902	74	1
Thallium (assumed as 100% Thallic oxide)	0.182	1.0	7
Vanadium ·	2.65	103	24
Zinc	3.71	14.718	250
Cyanide (assumed as 100% copper cyanide)	0 0288	7-	NA

Notes:

NA - Not Available or Not Applicable

- * RCRA Facility Investigation Report, Plant No. 7 Area, December 1996.
- ** Soluble Threshold Limit Concentrations (STLC). Ref. California Code of Regulations, Title 22. Division 4.5. Article 3. Section 66261.24.